XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(21)

मामला क्रमांक Cr. Appeal No. 562/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT:
(In Jail)

Rambilas, S/o Gokul, Caste Yadav, aged 50 years, R/o Village Bamhani, P.S. Chhuriya, District Rajnandgaon (Chhattisgarh)

-Versus-

RESPONDENT:

State of Chhattisgarh, Through P.S. Chhuriya, District Rajnandgaon

(Criminal Appeal under Section 374 (2) of the Cr.P.C.)

Division Bench: -

Hon'ble Shri L.C. Bhadoo &

Hon'ble Shri Sunil Kumar Sinha, JJ.

6-9-2007:-

Shri P.K.C. Tiwari, Sr. Advocate with Shri Avinash Mishra, Advocate for the appellant.

Shri D.K. Gwalre, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on *Dais*.

L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 27th May, 2001 passed by the Sessions Judge, Rajnandgaon in S.T. No.28/2001 whereby learned Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

(R2)

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The case of the prosecution, in brief, is that on 16-11-2000 at about 4 p.m. deceased Binjhwar Yadav was grazing cattle near Bamhani road. P.W.-15 Rajeshwar was with him. At that time, the accused came there, he started abusing the deceased in the name of mother & sister & said that 'you have already seen him earlier'. Thereafter, he threatened Binjhwar Yadav to attack him. When Binjhwar Yadav objected to it, the accused attacked him with lathi on his head, left & right hand & left shoulder, as a result of which Binjhwar fell down on the ground. The incident was witnessed by his grandson Rajeshwar (PW-15), from there he went to PW-14 Kushlal, son of the deceased, and informed him about the incident. In the meantime, the accused ran away towards the village. The deceased lodged a report Ex.P/25 at 5.50 p.m. in the Police Station Chhuriya, on which offence under Sections 294, 323 & 506 of the I.P.C. was registered. Injured Binjhwar was sent for medical examination under Ex.P/22 to the Government Hospital Chhuriya where Dr. A.K. Bansod (PW-9) examined his injuries and prepared injury report Ex.P/10. Binjhwar Yadav was admitted in Chhuriya Hospital for treatment. During his treatment, when his condition became precarious, he was shifted to Rajnandgaon Hospital under Ex.P/12.

During the police custody, the accused gave memorandum Ex.P/5, in pursuance of that, weapon of offence, Tendu club was seized under Ex.P/4, which was sent to the doctor for examination under Ex.P/24. Dr. Y.K. Tiwari after examination gave his report Ex.P/13. He opined that injuries sustained by Binjhwar Yadav can be caused by said lathi. The investigating officer seized plain soil & blood stained soil from the place of occurrence under Ex.P/21. In the Government Hospital Rajnandgaon, X-

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ray of the injuries of Binjhwar Yadav was taken through plates Exs.P/8 & P/9 by Dr. Y.K. Tiwari. As per the report Ex.P/7, fracture on the left humorous bone was noticed. During the treatment, Binjhwar Yadav succumbed to the injuries on 23-11-2000 in the Government Hospital, Rajnandgaon.

The merg intimation was sent to the Police Station & I.O. after giving notice Ex.P/2 to the Panchas, prepared inquest Ex.P/3 on the body of the deceased. The body was sent for postmortem examination under Ex.P/20 where (PW-7) Dr. V.K. Damle conducted postmortem, prepared postmortem report Ex.P/6. He opined that cause of death was excessive haemorrhage, on account of head injury & pressure on the brain.

After completion of the investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Rajnandgaon, who in turn committed the case to the Sessions Judge, Rajnandgaon, where the prosecution in order to establish the charge against the accused examined 20 witnesses. Statement of the accused was recorded under Section 313 Cr.P.C. in which he denied material appearing against him in the prosecution evidence, stated that he is innocent and has been implicated in a false case.

Learned Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused as aforementioned.

We have heard Shri P.K.C. Tiwari, Sr. Advocate with Shri Avinash Mishra, Advocate for the accused/applicant and Shri D.K. Gwalre, Additional Public Prosecutor for the State/respondent.

(RH)

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As far as homicidal death is concerned, PW-15 Rajeshwar, grandson of the deceased, has stated that at the time of the incident he was at the scene of occurrence. The accused present in the Court had attacked his grandfather with lathi on his head, thereafter he attacked on his hand & ran away. He informed his uncle Kushlal that the accused had attacked him. When Kushlal came on the scene, he saw that Rambilas had already ran away. PW-9 Dr. A.K. Bansod has stated that on 16-11-2000 he examined injuries of Binjhwar Yadav. There was lacerated wound on the left side of the head in the size of 4cm x 0.5cm x 0.5cm. The injured was vomiting, therefore, he was kept under observation in the PHC. There were multiple fractures in the humorous bone & the injured was complaining of pain. There was abrasion on the left shoulder. PW-7 Dr. V.K. Damle has stated that on 23-11-2000 he conducted postmortem on the body of the deceased. There was a stitched wound in the size of 3" x 1" x 1" on the left side of the head. There was fracture in the left hand. There was clotted blood on the right side of the head & multiple fracture of the right parietal bone. Membrane of the brain was ruptured. He opined that cause of death was head injury, excessive haemorrhage and pressure on the brain. Therefore, in view of the ocular and medical evidence, it is established that death of the deceased was homicidal in nature.

As far as involvement of the accused in the crime in question is concerned, Shri P.K.C. Tiwari, learned Sr. Advocate, argued that there is only one eyewitness to the incident whose presence on the scene of occurrence is doubtful.

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As has been mentioned earlier, PW-15 Rajeshwar has categorically stated that at the time of the incident he was with his grandfather. He saw accused Rambilas attacked with a club. The presence of this witness is established by the fact that Binjhwar Yadav, injured, himself lodged the FIR Ex.P/25 in the Police Station Chhuriya in which presence of Rajeshwar has been mentioned. Moreover, PW-15 Rajeshwar has stated that he immediately informed his uncle & son of the deceased namely, Kushlal. The above evidence of this witness is corroborated by the evidence of PW-14 Kushlal, who has stated that at about 4 p.m. his nephew Rajeshwar came and informed at his residence that accused Rambilas is attacking his grandfather with a club, therefore, he went to the place of occurrence and saw that his father was lying in injured condition. Therefore, from the above fact, presence of PW-15 Rajeshwar on the place of occurrence is established, who has stated that the accused attacked the deceased.

As far as other circumstantial evidence involving the accused in the crime in question is concerned, PW-14 Kushlal has stated that when he reached to his house, he saw that his father was lying on the ground & he was unconscious. He enquired from his father as to who has attacked him, then he said that Rambilas has attacked. About making oral dying declaration before this witness, perusal of Ex.D/1, police case diary statement which was recorded by the I.O. on the very next day of the incident reveals that there is mention about oral dying declaration made by the deceased before this witness.

Shri Tiwari argued that from the evidence of PW-14 Kushlal, it appears that when he came, Binjhwar Yadav was lying unconscious,

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therefore, there was no occasion for him to make oral dying declaration before this witness.

Perusal of the record does not show that Binjhwar Yadav remained unconscious forever. It is just possible that initially he was unconscious, thereafter, he must have regained consciousness. There is nothing in cross-examination to suggest that Binjhwar Yadav remained unconscious throughout till he died. Therefore, from the evidence of PW-14 Kushlal, it is established that the deceased made oral dying declaration before his son regarding attack made by the accused on his head. Therefore, involvement of the accused is established in view of the ocular evidence of PW-15 Rajeshwar as also oral dying declaration made before PW-14 Kushlal by the deceased.

Shri Tiwari argued that from the facts, there is nothing on record to establish that the accused attacked the deceased with intention to cause his death. Moreover, the incident occurred on 16-11-2000 whereas, Binjhwar Yadav died on 23-11-2000.

On the other hand, Shri Gwalre supported the judgment of the trial Court on this fact.

It is admitted position that Binjhwar Yadav was attacked on 16-11-2000 whereas he died on account of injuries on 23-11-2000. Moreover, quarrel started on a petty matter because the deceased was grazing cattle near the road where the accused appeared & objected about grazing of cattle at that place, he abused him which was objected by the deceased & the accused attacked him with club carrying with him, as a result of which the deceased sustained injuries. Moreover, the doctor who examined the

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injuries of the deceased, as also the doctor who conducted postmortem have not stated that injuries found on the body of the deceased were sufficient in the ordinary course of nature to cause the death. There is nothing on record to show that in fact, the accused attacked the deceased with intention to cause his death. Therefore, in view of the above, we are of the considered opinion that the prosecution has not been able to establish against the accused that he in fact, attacked the deceased with intention to cause his death. However, looking to the nature of injuries, knowledge can be attributed to the accused that manner in which he attacked the deceased, he had knowledge that he may likely to cause death of the deceased. Therefore, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.

In the result, the appeal partly succeeds. Conviction and sentence imposed upon the accused under Section 302 of the I.P.C. are set aside, instead thereof, he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for 7 years. It is stated that the accused is in detention since 20-11-2000 till today. The accused shall be entitled for set off of the said detention period against the sentence imposed upon him.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

Barve